

Water Agency Roles and Responsibilities from California Water Plan Update 2005

Institutional Roles

The State and federal governments are responsible for representing and protecting the public trust (certain types of property of high public value held for the benefit of all citizens). Together, the State and federal governments provide assistance, guidance, and oversight to local governments (city and county-owned municipal water systems, etc.), American Indian tribes, and special districts.

California Government

Many State departments and agencies oversee California's water resources. The **Department of Water Resources (DWR)** operates the State Water Project and is responsible for overall water planning.

The **State Water Resources Control Board (SWRCB)** integrates water rights and water quality decision-making authority. SWRCB and the nine Regional Water Quality Control Boards are responsible for protecting California's water resources. Pursuant to the Porter-Cologne Water Quality Control Act, water quality control plans for each of the nine regions become part of the California Water Plan.

Other State agencies and their roles in water management follow:

California Bay-Delta Authority—Oversees the 23 State and federal agencies working cooperatively through the CALFED Bay-Delta Program to improve the quality and reliability of California's water supplies while restoring the Bay-Delta ecosystem.

California Business Transportation and Housing Agency—Oversees the activities of 13 departments and several economic development programs and commissions. Its operations address financial services, transportation, affordable housing, real estate, managed health care plans and public safety.

California Coastal Commission—Plans for and regulates land and water uses in the coastal zone consistent with the policies of the Coastal Act.

California Department of Conservation—Provides services and information that promote environmental health, economic vitality, informed land-use decisions, and sound management of California's natural resources. This department also manages a state watershed program.

California Department of Boating and Waterways—Develops public access to the waterways and promotes on-the-water safety, with programs that include aquatic pest control in the Sacramento-San Joaquin Delta; coastal beach erosion control, and grants for vessel sewage pumpout stations.

California Department of Fish and Game—Regulates and conserves the state's wildlife and is a trustee for fish and wildlife resources (FDC § 1802).

California Department of Food and Agriculture—Promotes food safety, protects public and animal health, and protects California from exotic and invasive plant pests and diseases.

California Department of Forestry and Fire Protection (CAL FIRE)—Manages and protects California's natural resources. Provides fire protection and stewardship of over 31 million acres of California's privately-owned wildlands and offers varied emergency services in 36 of the State's 58 counties via contracts with local governments.

California Department of Parks and Recreation (CA State Parks)—Manages more than 270 park units, which protect and preserve culturally and environmentally sensitive structures and habitats, threatened plant and animal species, ancient Native American sites, and historic structures and artifacts. Responsible for almost one-third of California's scenic coastline and manages many of the State's coastal wetlands, estuaries, beaches, and dune systems.

California Department of Pesticide Regulation—Regulates pesticide sales and use and plays a significant role in monitoring for the presence of pesticides and in preventing further contamination of the water resource.

California Department of Public Health—Regulates public water systems, oversees water recycling projects; permits water treatment devices, certifies drinking water treatment and distribution operators, supports and promotes water system security, provides support for small water systems and for improving technical, managerial, and financial capacity, oversees the Drinking Water Treatment and Research Fund for MTBE and other oxygenates, and provides funding opportunities for water system improvements, including funding under Proposition 84, Proposition 50 and the Safe Drinking Water State Revolving Fund.

California Department of Toxic Substances Control—Provides technical oversight for the characterization and remediation of soil and water contamination.

California Energy Commission—The State's primary energy policy and planning agency, has responsibility for forecasting, regulation, and development and promotion of technology.

California Environmental Protection Agency—Restores, protects, and enhances the environment to ensure public health, environmental quality, and economic vitality.

California Integrated Waste Management Board—Manages the estimated 76 million tons of waste generated each year by reducing waste whenever possible, promoting the management of all materials to their highest and best use, and protecting public health and safety and the environment.

California Public Utilities Commission—Regulates privately owned water and other utility companies.

Central Valley Flood Protection Board—Plans flood controls along the Sacramento and San Joaquin rivers and their tributaries in cooperation with the U.S. Army Corps of Engineers.

Colorado River Board—Protects California’s rights and interests in the resources provided by the Colorado River.

Delta Protection Commission—Responsible for preparation of a regional plan for the “heart” of the Delta.

Governor’s Office of Emergency Services—Coordinates the activities of all State agencies relating to preparation and implementation of the State Emergency Plan, coordinates the response efforts of State and local agencies, and coordinates the integration of federal resources into State and local response and recovery operations.

Governor’s Office of Planning and Research—Provides legislative and policy research support for the Governor’s office. The State Clearinghouse coordinates the State level review of environmental documents pursuant to the California Environmental Quality Act (CEQA); provides technical assistance on land use planning and CEQA matters; and coordinates State review of certain federal grants programs.

Native American Heritage Commission—Its mission is to provide protection to Native American burials from vandalism and inadvertent destruction, provide a procedure for the notification of most likely descendants regarding the discovery of Native American human remains and associated grave goods, bring legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries and place of worship on public property, and maintain an inventory of sacred places.

Sierra Nevada Conservancy – is comprised of all or part of 22 counties and over 25 million acres the Region is California’s principal watershed, supplying 65% of the developed water supply. The Conservancy initiates, encourages, and supports efforts that improve the environmental, economic and social well-being of the Sierra Nevada Region, its communities and the citizens of California.

State Lands Commission—Manages public trust lands of the State (the beds of all naturally navigable rivers, lakes, and streams, as well as the State’s tide and submerged lands along California’s more than 1,100 miles of coastline). The public trust doctrine is applied to ensure that the public trust lands are used for water-related purposes, including the protection of the environment, public recreation, and economic benefit to the citizens of California.

Federal Government

The **U.S. Bureau of Reclamation (USBR)** operates the Central Valley Project (CVP), the largest water project in California, and regulates diversions from the Colorado River.

Other federal agencies play important roles in the regulation and management of California’s water resources:

Army Corps of Engineers—Plans, designs, builds, and operates water resources projects (navigation, flood control, environmental protection, disaster response, etc.).

Federal Energy Regulatory Commission (FERC)—Regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to license hydropower projects.

National Marine Fisheries Service (NOAA Fisheries)—Protects and preserves living marine resources, including anadromous fish.

National Park Service—Manages national parks, including their watersheds.

U.S. Bureau of Land Management—Manages federal lands.

U.S. Bureau of Reclamation—Constructs federal water supply projects and is the nation's largest wholesaler of water and the second largest producer of hydroelectric power.

U.S. Department of Agriculture (USDA)—Manages forests, watersheds, and other natural resources.

[USDA] Natural Resource Conservation Service—Provides technical and financial assistance to conserve, maintain, and improve natural resources on private lands.

U.S. Environmental Protection Agency—Protects human health, safeguarding the natural environment.

U.S. Fish and Wildlife Service—Conserves, protects, and enhances fish, wildlife, and plants and their habitats.

U.S. Geological Survey—Provides water measurement and water quality research.

Western Area Power Administration—Manages power generated by the Central Valley Project.

Tribal Governments

Some Indian reservations and other federal lands have reserved water rights implied from acts of the federal government, rather than State law. When tribal lands were reserved, their natural resources were implicitly reserved for tribal use. Because reserved tribal rights were generally not created by state law, states' water allocations did not account for tribal resources. In the landmark *Winters v. U.S.* case in 1908, the U.S. Supreme court established that sufficient water was reserved to fulfill the uses of a reservation at the time the reservation was established. The decision, however, did not indicate a method for quantifying tribal water rights. *Winters* rights also retain their validity and seniority over State appropriated water whether or not the tribes have put the water to beneficial use. Only after many years did tribes begin to assert and develop their reserved water rights. In 1963 the U.S. Supreme Court decision *Arizona v. California*

reaffirmed Winters and established a quantification standard based on irrigation, presupposing that tribes would pursue agriculture. Despite criticisms of the “practicably irrigable acreage” (PIA) quantification standard from various perspectives, the PIA standard provided certainty to future water development.

Quantifying water needs in terms of agricultural potential does not accurately show the many other needs for water. Even urban water quantity and quality assessments that look at the adequacy of the domestic water supply and sanitation do not provide a complete picture of tribal water needs. A large part of the tribal water needs are for in-stream flows and other water bodies that support environmental and cultural needs for fishing, hunting, and trapping.

The 1902 Reclamation Act provided for the establishment of irrigated agriculture and settlement throughout the Western states. Historical perspective indicates this policy was pursued generally without regard to Indian water rights or the 1908 Winters decision. In 1952 Congress passed the McCarran Amendment which waived sovereign immunity and authorized the adjudication of federal water rights in stream adjudications brought in state courts. The court later ruled that state adjudications may also apply to Indian reserved water rights held in trust by the United States. In asserting their Winters rights, tribes have come into conflict with water-using development that grew out of substantial federal and private investment.

Costly litigation, negotiation, or both are the usual means of resolving Indian water disputes, and some cases can take decades to reach agreement. Some tribes request assistance from the federal government to pursue their water rights settlements, reminding concerned parties of the conflicting roles the federal government can assume on two or more sides of a judicial or administrative issue.

Public Agencies, Districts, and Local Governments

Local city and county governments and special districts have ultimate responsibility for providing safe and reliable water to their customers. In general, California has two methods for forming special districts that develop, control, or distribute water: (1) enactment of a general act under which the districts may be formed as set forth in the act, and (2) enactment of a special act creating the district and prescribing its powers.

Private Entities

In addition to public agencies, private entities may provide water supply. Mutual water companies, for example, are private corporations that perform water supply and distribution functions similar to public water districts. Investor-owned utilities are also involved in water supply activities, sometimes as an adjunct of hydroelectric power development. These investor-owned water companies are regulated by the California Public Utilities Commission.

International Trade Agreements

Since January 2000 more than 140 World Trade Organization (WTO) member governments have been negotiating to further liberalize the global services market. The General Agreement on

Trade in Services (GATS) is among WTO's most important agreements. It is a set of multilateral rules covering international trade in services. GATS recognizes "the right of Members to regulate, and to introduce new regulations, on the supply of services ... in order to meet national policy objectives." No international trade treaty now in effect or being negotiated by the United States prevents local, state, or federal government agencies from reviewing and regulating water projects that involve private companies with multinational ties. Such projects include desalination plants, water transfers, water storage projects (above and below ground), and wastewater reclamation projects. There is no conflict with international trade treaties as long as government regulations are applied to water projects involving multinational corporations in the same manner they are applied to water projects owned or operated by domestic companies or public utilities.

Individual Water Users

Collectively, the millions of urban businesses, individual households, and farms fund the operation and maintenance of California's water systems through payment of taxes and water bills. Each makes decisions on water use and conservation for its own circumstances. Individual water users must dispose of used water, usually through a sewer or gutter, which in turn can create water pollution. This return flow can provide water to downstream water users. During drought periods, many households modify outdoor watering to conserve water. Each year, farmers make decisions on planting and water application based on weather conditions, forecasted water supply, and individual tolerance for market risk. Taken together, these individual decisions about water use have an enormous impact on both water demand and water quality and present many opportunities for individuals to play positive roles in better managing California's water quantity and quality.

Additional information regarding institutional roles and specifically the:

- Law of the River (Colorado River)
- Water Contracts
 - State Water Project
 - Central Valley Project
- Area of Origin Protections
- Water for Environmental Uses
- Water Transfers

Can be found in the California Water Plan, Update 2005, Volume 1, Chapter 3.